IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 25 of 2002
in
SPECIAL CIVIL APPLICATIONNo 2134 of 2001
with
CIVIL APPLICATION No 569 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA STOCK EXCHANGE LTD

Versus

JMC SECURITIES PVT LTD

Appearance:

1. LETTERS PATENT APPEAL No. 25 of 2002

MR ASHOK L SHAH for Appellant

MR SN SHELAT, ADVOCATE GENERAL with
MS PP LAHERI for Respondent No. 1-2

NANAVATI ASSOCIATES for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE M.S.SHAH

Date of Judgment: 19/07/2003

REASONS

(Per : MR.JUSTICE M.S.SHAH)

By order dated 9.7.2003 we partly allowed the appeal and modified the order dated 26.9.2001 of the learned Single Judge in Special Civil Application No. 2134 of 2001 to the following extent :-

"The appellant Vadodara Stock Exchange is directed to refund the amount of Rs.5,00,000/- (Rupees Five Lacs only) to the respondents alongwith interest at the rate of 10.5% from 13th December 1995 till the date of payment. The appellant is directed to pay the aforesaid amount of Rs.5,00,000/- together with interest latest by 31st August 2003. The appeal is allowed in part accordingly. There shall be no order as to costs."

The reasons for passing the above order are set out hereinafter.

2. The facts leading to filing of this appeal are as under :-

2.1 The appellant (hereinafter referred to as "the Stock Exchange" or "Vadodara Stock Exchange (VSE)") had two categories of membership -

(i) corporate membership which required the applicant to give a cash security of Rs. 10 lacs, and

(ii) individual membership which required the applicant to give security of Rs.5 lacs (in the form of Rs.2.5 lacs as cash security and another Rs.2.5 lacs by way of shares and security).

It is for the first time that the Vadodara Stock Exchange received application dated 10.10.1995 (Annexure "A") to convert the individual membership of partnership firm M/s Jayant Modi & Co. into corporate membership in the name of JMC Securities Pvt. Ltd. i.e. the first respondent herein (original petitioner No. 1). In the said letter, the respondent-Company stated, inter alia, as under :-

"Since VSE is awaiting clearance from SEBI

whether the standard of security for corporate card and converted corporate card is at parity or not, to facilitate early processing of documents relating to conversion. We are ready to deposit of Rs.10 lacs as cash security with VSE in parity with corporate card till the SEBI clears the matter. However we shall deposit Rs.10 lacs as cash security on confirmation by VSE, forwarding the related papers to SEBI.

We undertake to abide by the standard of security deposit as specified by SEBI we shall input more deposit if required by SEBI or shall seek refund if any excess over SEBI standard.

We in view of our above offer and undertaking, request you to provisionally process the papers for conversion of membership and oblige."

In view of the above request, the appellant-Stock Exchange wrote letter dated 22.11.1995 (Annexure "B") to SEBI in the following terms :-

" Sub: Transfer of individual membership into corporate membership.

Dear Sir,

... ... (enclosing a proposal of Jayant Modi & Co. for converting individual membership into corporate membership) ... ... The Board approved this case subject to the approval of SEBI as our guidelines for conversion of individual membership to corporate membership have not been approved by SEBI till date. The matter was being looked after by Shri Narsimhan, Division Chief - SMD. The only difference between an individual converting to corporate and direct corporate member is that the individual member gives a permanent deposit of Rs.5 lacs whereas the corporate member gives a deposit of Rs.10 lacs.

Since corporate members have already been registered with SEBI, we are forwarding this for registration as a corporate member with a permanent deposit of Rs.10 lacs. As and when the guidelines for conversion of individual membership to corporate membership are cleared by SEBI we will refund the additional deposit of Rs.

5 lacs. In case SEBI considers to remove this discrepancy between the two membership status and suggests collection of Rs.10 lacs as permanent deposit then we will withhold the same. It is therefore requested that this case may be approved on the lines of other cases approved by SEBI."

(emphasis supplied)

Thereafter, the the Board of the Vadodara Stock Exchange decided that the conversion be approved subject to the following terms and conditions and informed the respondent-Company accordingly by letter dated 24.11.1995:-

"1. An interest free cash deposit of Rs.10 lacs is required to be deposit(ed) with VSE immediately.

2. Since the guidelines for converting an individual membership into a corporate membership is yet to be approved by SEBI, your conversion shall be subject to such terms and conditions as may be decided by SEBI."

Thereafter on 13.12.1995, the respondent-Company sent a demand draft of Rs.10 lacs to the appellant-Stock Exchange as interest free deposit for conversion of individual membership into corporate membership alongwith required formalities as stated in the letter dated 13.12.1995 which read as under :-

"As agreed and promised by us, we enclose herewith Demand Draft of Rs.10 lacs as interest free deposit.

The deposit shall be kept with you till the final norms for conversion of individual membership to corporate membership is conveyed by SEBI.

Final decision of SEBI shall be binding on us and if any excess shall be refunded to us.

Please refer to your letter dated 24.11.95.

Here we complete required formalities for conversion of individual membership to corporate membership.

Please proceed the papers to SEBI for necessary procedures."

Accordingly, the appellant-Stock Exchange converted the individual membership of Jayant Modi & Co. into corporate membership of JMC Securities Pvt. Ltd. i.e. respondent No.1-Company in December, 1995 -January, 1996.

2.2 Thereafter in the budget of 1997, with a view to encouraging corporate membership, from April 1997 the Central Government exempted from capital gain tax any gain or profits arising on individual membership being converted into a corporate membership. From April 1997, SEBI also waived regsitration fee of Rs.5,000/- for those opting for corporate membership from April 1997 to December 1997/1998. Following this policy of encouraging corporatisation of membership of Stock Exchange, the Board of the appellant-Stock Exchange decided that those individual members who converted themselves into corporate members during the period from 1.4.1997 to 31.12.1997 (which was subsequently extended to 31.12.1998) would not be required to pay security deposit on the basis of corporate membership, but shall continue to be liable to pay security deposit, etc. as charged to an individual member. A special resolution to this effect was passed by the general body of the appellant-Stock Exchange at its 7th Annual General Meting held on 27.9.1997. On the basis of the said special resolution, 35 individual members got themselves converted into corporate members after 27.9.1997 and before 31.12.1997.

2.3 Thereafter in October/November, 2000, the respondent-Company called upon the appellant-Stock Exchange to refund the deposit of Rs.10 lacs given by the respondent-Company to the Stock Exchange alongwith letter dated 13.12.1995, on the ground that the conversion into corporate membership of the respondent-Company was subject to such terms and conditions as may be decided by the SEBI and since the appellant-Stock Exchange had decided as per the guidelines approved by the SEBI to convert 35 individual members into corporate members, the deposit made by the respondent-Company to the Stock Exchange was required to be refunded. The Stock Exchange did not accept that request, on the ground that conversion of 35 individual members into corporate members in the year 1997 was pursuant to the resolution dated 27.9.1997 which was passed by the general body of the Stock Exchange pursuant to the new policy of the Central Government and the SEBI to encourage

corporitisation of membership. Hence, the respondent-Company filed Special Civil Application No. 2134 of 2001 to direct the Stock Exchange to refund to the petitioner the amount of Rs.10 lacs collected and retained as security deposit together with interest at the rate of 18% p.a. from the date of such deposit till payment.

2.4 By the judgment dated 26.9.2001, a learned Single Judge of this Court (Coram : Kundan Singh, J.) allowed the petition in the following terms :-

> "Accordingly, the petition is allowed and the decision of the respondent communicated by letter dated 19.12.2000 is hereby quashed. The respondent Vadodara Stock Exchange is hereby directed to refund the amount of Rs.10 lacs to the petitioner alongwith interest at the rate of 12% per annum from 27th September, 1997 till the date of payment. This direction will be complied within a period of 3 weeks from the date of presentation of the certified copy of this judgment. Rule is made absolute to the above extend with no order as to costs."

It is against the aforesaid judgment that the present appeal is filed.

3. When the appeal came up for preliminary hearing, the Court admitted the appeal and granted ex-parte ad-interim stay of the operation and execution of the judgment under appeal. When the Civil Application for interim stay came up for hearing, at the request of the learned counsel for the parties, we took up the Letters Patent Appeal itself for final disposal. Accordingly, the learned counsel for the parties have been heard at length on merits of the appeal and the appeal is accordingly being disposed of by this judgment.

4. The question which arises for consideration is whether the respondent-Company was entitled to be treated on par with the 35 other members who got their individual membership of the Vadodara Stock Exchange converted into corporate membership pursuant to the resolution dated 27.9.1997 passed by the general body of the Stock Exchange at its 7th Annual General Meeting.

5. Mr Ashok L Shah, learned counsel for the appellant-Stock Exchange submitted that the resolution dated 27.9.1997 passed by the general body of the Vadodara Stock Exchange at its 7th Annual General Meeting

was only to apply to those cases where an individual member had applied between 1.4.1997 and 31.12.1997 (extended to 31.12.1998) for conversion into corporate membership pursuant to the policy of the Central Government in the budget of 1997 to encourage conversion of individual membership into corporate membership and, therefore, the petitioner did not belong to the same class as the 35 individual members who applied for conversion pursuant to the said new policy as contained in the resolution dated 27.9.1997. There was no question of applying the said resolution to conversion of individual membership into corporate membership till March, 1997. The respondent Company had got the individual membership of Jayant Modi & Co. converted into corporate membership of the respondent Company in December, 1995 and had given non-refundable deposit of Rs.10 lacs because at that point of time the corporate member was required to give Rs.10 lacs in cash as security.

In the alternative, it is submitted that in its letter dated 22.11.1995, the appellant-Stock Exchange had suggested two alternatives to SEBI, one was to accept the permanent deposit of Rs.10 lacs and the second was to charge only Rs.5 lacs for conversion and to refund the additional Rs.5 lacs. It is, therefore, submitted that in any view of the matter, when individual member Jayant Modi & Co. had given deposit of only Rs.5 lacs (cash plus shares and security) while becoming an individual membership, it had no right in December 1995 to get conversion into corporate membership, without paying any additional amount.

6. On the other hand, Mr SN Shelat, learned Advocate General, instructed by Ms Lahiri, for the respondent-Company submitted that since the payment of Rs.10 lacs made by the respondent-Company to the Stock Exchange was by way of deposit subject to finalization of the norms for conversion by SEBI and since SEBI had not taken any decision till 1997 and for the first time, the Stock Exchange took the decision not to charge any fees for conversion of individual membership into corporate membership as per the resolution dated 27.9.1997, the respondent-Company was entitled to get the refund of the entire deposit made in December, 1995.

7. Having heard the learned counsel for the parties, we are of the view that when the respondent Company applied for conversion of individual membership of Jayant Modi & Co. into corporate membership in favour of the respondent Company, there were two kinds of membership

-(i) individual membership for which a permanent non-refundable deposit of Rs.5 lacs was required to be given to the Vadodara Stock Exchange and (ii) corporate membership for which a permanent non-refundable deposit of Rs.10 lacs was required to the given to the Vadodara Stock Exchange. Since the SEBI had not framed any guidelines for conversion of individual membership into corporate membership, the Vadodara Stock Exchange itself framed guidelines for such conversion under which, in order to get the conversion, the individual member would be required to give an additional deposit of Rs. 5 lacs over and above the existing deposit of Rs.5 lacs given as an individual member. However, apprehending that such course of action may not be approved by the SEBI and the SEBI may insist that the applicant for corporate membership must give a permanent non-refundable deposit of Rs.10 lacs without getting any credit or adjustment of the deposit of Rs.5 lacs given earlier as an individual member, in order to err on the safer side, the appellant-Stock Exchange required the respondent Company to give additional deposit of Rs.10 lacs. This is clear from the appellant's letter dated 22.11.1995 (Annexure "B") quoted in para 2.1 above.

8. Since the SEBI thereafter did not respond to the letter dated 22.11.1995 of the appellant-Stock Exchange and since the SEBI permitted the appellant-Stock Exchange to go ahead with its resolution dated 27.9.1997 for conversion of individual membership into corporate membership from 1.4.1997 to 31.12.1998, without taking any additional deposit, it would stand to reason that the appellant-Stock Exchange was not required to take additional deposit of Rs.10 lacs over and above the deposit of Rs.5 lacs which was already given to the Stock Exchange when Jayant Modi & Co. has become an individual member. In light of the above, it appears that the appellant-Stock Exchange was required to take as permanent non-refundable deposit only the difference between Rs.10 lacs required from a newly enrolled corporate member and Rs.5 lacs which was already given as a deposit by the existing individual member who applied for conversion of individual membership into corporate membership.

9. The appellant's contention that in absence of decision by SEBI between December 1995 and March 1997, on the appellant Stock Exchange's letter dated 24.11.1995, the application for conversion of Jayant Modi & Co.'s application into corporate membership of the respondent Company should be treated as pending and, therefore, governed by the resolution dated 27.9.1997 cannot be

accepted, because the respondent Company was granted registration as a corporate membership (by conversion of individual membership of Jayant Modi & Co.) in January 1996 and the respondent Company had started enjoying the status and benefits of corporate membership from January 1996. SEBI's decision was awaited only on the limited question whether in December 1995, the fees for conversion of individual membership into corporate membership was Rs.10 lacs or the difference between Rs.10 lacs and the fees paid by the individual member (i.e. Rs.5 lacs) earlier while becoming an individual member. In absence of SEBI's silence for a long period, the respondent Company cannot be expected to wait indefinitely. Hence, considering the policy for the period from April 1997 onwards, we hold that in 1995-96 the applicant for such conversion was required to pay only the difference i.e. Rs.5 lacs and not Rs.10 lacs required to be paid by an applicant for a new corporate membership.

10. In view of the above discussion, we are of the view that the respondent Company was not entitled to get the refund of the entire amount of Rs.10 lacs which was given by it as a deposit to the appellant-Stock Exchange in December, 1995 for converting individual membership of Jayant Modi & Co. into corporate membership in favour of the respondent-Company and that the respondent Company is entitled to get a refund of only Rs.5 lacs as discussed above. Since, such additional amount of Rs.5 lacs was paid by the respondent Company to the appellant-Stock Exchange on 13.12.1995, the respondent Company would be entitled to get the said amount with interest from the date of such deposit till the date of refund.

11. At this stage, the learned counsel for the appellant-Stock Exchange submitted that the learned Single Judge ought not to have awarded interest at the rate of 12% p.a. since now interest is being awarded at the rate of 9% p.a. in various decisions of the Apex Court and this Court. However, the learned Advocate General opposed the request and submitted that since the deposit was made in December, 1995 and the judgment of the learned Single Judge was rendered in September, 2001, the direction regarding the rate of interest may not be disturbed.

12. Having heard the learned counsel on this question and having regard to the peculiar facts and circumstances of the case, we are of the view that the interests of justice would be served if the appellant-Stock Exchange is directed to refund the amount of Rs.5 lacs alongwith

interest at the rate of 10.5% from the date of the deposit i.e. from 13.12.1995 till the date of payment.

13. These are the reasons for the order dated 9.7.2003.

(KSHITIJ R. VYAS, J.)

(M.S. SHAH, J.)

sundar/-